IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 899 of 1993

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRAKANT MOTILAL MEHTA - Petitioner(s)

Versus

RAJENDRA SURENDRA ALMOULA - Respondent(s)

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Appearance :
MR KUNJAL PANDYA for MR UNMESH D SHUKLA for Petitioner No(s).: 1.
MR SH ALMAULA for Respondent No(s).: 1 – 1.
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date : 08/08/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 24th November, 1987 passed by the learned Joint District Judge, Surat in Regular Civil Appeal No.80/1982, the appellant (plaintiff in Small Rent Suit No.1364/1977) has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates

Control Act, 1947 (hereinafter referred to as, **"the Rent Act"**).

The petitioner-plaintiff is the owner of the suit house bearing Nondh No.1997 situated in Ward No.11 at Surat. Under the rent note dated 25th October, 1946 (Exh.44) part of the suit house comprising two rooms on the first floor and one room on the second floor was leased to the predecessor of the defendant for a monthly rent of Rs.25=00. It is common case of the parties that inspite of the agreed rent of Rs.25=00, on account of close relations, the tenant was charged a monthly rent of Rs.8=00 which was gradually increased to Rs.13=00. After the death of the tenant the defendant became statutory tenant as envisaged by Section 5(11)(c)(i) of the Rent Act. The defendant moved Civil Misc. Application No.39/1975 under Section 11(1) of the Rent Act in the Court of Small Causes, Surat for determination of standard rent of the suit premises. According to the defendant Rs.13=00 charged by the plaintiff was excessive and that Rs.8=00 was the standard rent of the suit premises. The Application was contested by the plaintiff. According to the plaintiff the agreed rent of the suit premises was Rs.25=00. Considering the permitted

increases the plaintiff was entitled to a rent of Rs.35=00 per month. The said Application came to be decided on 26th February, 1976 (Exh.45). The Court held that the standard rent of the suit premises was Rs.20=00 per month inclusive of existing taxes. I am informed that the said standard rent was confirmed by the District Court in Revision Application preferred by the defendant-tenant.

As the defendant was in arrears of rent since 1st October, 1967 the plaintiff gave notice of demand dated 20th September, 1977 (Exh.46). The said notice was replied by the defendant on 24th September, 1977 (Exh.52). Under the said reply the defendant raised dispute as to the standard rent afresh. According to the defendant the area of the rented premises was reduced in as much as the room on the ground floor was being used by the other tenant and the defendant's right to use the bathroom and the terrace was curtailed. Hence, the standard rent of Rs.20=00 fixed by the Court earlier was excessive and till the date of the decision of the Court i.e. 26th February, 1976 the defendant was liable to pay rent @ Rs.13=00 per month.

As the defendant failed to pay the amount of arrears of rent demanded under the suit notice (Exh.46), the plaintiff instituted Small Rent Suit No.1364/1977 in the Court of Small Causes, Surat for recovery of possession of the suit premises and the amount of arrears of rent. The learned trial Judge recorded a finding that the defendant was in arrears of rent for more than six months; that the rent was payable by month; and that the defendant had failed to pay the amount of rent due within one month from the date of the receipt of the notice of demand given under Section 12(2) of the Rent Act. However, the trial Court was of the opinion that neglect to pay the rent on the part of the defendant was not intentional. The matter, therefore, did not fall within the purview of Section 12(3)(a) of the Rent Act. According to the trial Court the defendant was entitled to protection against eviction under Section 12(3)(b) of the Rent Act. Pending the suit the defendant had paid the arrears of rent in the Court. No decree for eviction could, therefore, be passed against the defendant. Accordingly, the trial Court, by judgment and order dated 1st February, 1982, dismissed the suit for possession. However, passed decree for recovery of amount of rent due.

Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No.80/1982 in the Court of District Judge, Surat. The Appeal was dismissed by the learned Joint District Judge by impugned judgment and order dated 24th November, 1987. According to the lower appellate Court, in earlier Civil Misc. Application No.39/1975 the standard rent was not fixed in accordance with law. If properly fixed, the standard rent should be Rs.20=00 plus the taxes. The lower appellate Court refixed the standard rent at Rs.20=00 per month and the taxes. Having refixed the standard rent as above, the lower appellate Court proceeded to hold that as the defendant was liable to pay the taxes the rent cannot be said to be payable by month. The matter was, therefore, governed by Section 12(3)(b) of the Rent Act. As to the compliance with the conditions mentioned in Section 12(3)(b) of the Rent Act the lower appellate Court was of the opinion that though the defendant was in arrears of rent, at the later stage of the suit he paid the amount of arrears and made deposit in excess. The defendant was, therefore, ready and willing to pay the rent. Feeling aggrieved, the plaintiff has preferred the present Revision Application.

Mr.Pandya has submitted that both the Courts below have erred in holding that the matter was out of the purview of Section 12(3)(a) of the Rent Act. Further, admittedly, the defendant had failed to comply with the conditions mentioned in Section 12(3)(b) of the Rent Act. Nevertheless, both the Courts below, in contravention of the settled principles of law, extended protection to the defendant.

Learned advocate Mr.Almaula has contested the Revision Application. He has submitted that in view of the concurrent finding recorded by both the Courts below, this Court, exercising revisional jurisdiction under Section 29(2) of the Rent Act, shall not interfere with the finding recorded by the Courts below.

I am unable to agree with Mr.Almaula. I am of the opinion that the approach of both the Courts below was totally perverse and in spite of the concurrent finding recorded by the Courts below interference is warranted.

As recorded hereinabove, the standard rent of the suit premises was determined in Civil Misc. Application No.39/1975 to be Rs.20=00 per month inclusive of taxes.

Thus, evidently the rent was payable by month. It is not disputed that the rent was in arrears since 1st October, 1967 i.e. for six months and more. As the question of standard rent was decided earlier and had become final, there could not have been a fresh dispute as to the standard rent. The allegation that the enjoyment of the suit premises was reduced to an extent which required determination of standard rent afresh was proved to be false. Thus, the dispute as to the standard rent raised by the defendant in reply (Exh.52) to the suit notice though was within one month from the date of the receipt of the suit notice was not genuine or bonafide. The defendant cannot be permitted to avoid the consequences of Section 12(3)(a) of the Rent Act by raising dispute which was devoid of goodfaith and which was based on falsehood. Moreover, in answer to the suit notice the defendant did not tender the amount of standard rent then due. I am of the opinion that all conditions mentioned in Section 12(3)(a) of the Rent Act were satisfied. A decree for eviction as envisaged by section 12(3)(a) of the Rent Act was, therefore, inevitable.

Even if the defendant were entitled to protection against eviction as envisaged by Section 12(3)(b) of the

Rent Act (as it stood prior to its amendment by Gujarat Act No.7 of 1985), the defendant was required to comply with the conditions mentioned in Section 12(3)(b) of the Rent Act. He was required to deposit the amount of rent then due on the first day of hearing of the suit and thereafter to continue to pay the rent regularly every month. Admittedly, the defendant did not pay the amount of rent due on the first day of hearing of the suit nor did he pay the amount of rent due thereafter pending the suit. The defendant, however, made good the deficit towards the end of the suit. Such conduct on the part of the defendant would not entitle her protection against eviction as envisaged by Section 12(3)(b) of the Rent Act. The lower appellate Court, having discussed how the defendant failed to deposit the amount of rent due on the first day of hearing of the suit and how she continued to be in arrears months after months, held that, **“...As per the amended section stated, above, the defaults prior to 13.8.81 made while making the payment have been made good because considering the subsequent overpayment the defaults loss the value, and become negligible. Therefore, no default which can be termed alarming, and inaction on the part of the tenant or gross neglect on the part of the tenant. Under the circumstances, the**

respondent in this case should be held the tenant, ready and willing to pay the rent." The above observation was totally uncalled for and contrary to the settled law. Further, the standard rent of Rs.20=00 including the taxes was determined by the trial Court in Civil Misc. Application No.39/1975 as far back as on 26th February, 1976. That order was challenged by the defendant in Civil Revision Application preferred before the District Court, Surat which came to be dismissed. The plaintiff had never challenged the said order of standard rent nor did he demand increase in the standard rent. Nevertheless, the lower appellate Court suo motu held that the standard rent should not include the taxes and that the plaintiff was entitled to recover taxes in addition to Rs.20=00 per month fixed in the earlier proceeding. Taking support of the said finding the lower appellate Court held that as the defendant was required to pay taxes, rent was not payable by month and the matter, therefore, fell out of the purview of Section 12(3)(a) of the Rent Act. Such perverse approach of the lower appellate Court cannot be sustained by this Court even in exercise of its limited jurisdiction in a revision application.

As recorded hereinabove, the present case was

squarely covered by Section 12(3)(a) of the Rent Act and the decree for eviction was inevitable. Even if the defendant were entitled to protection against eviction as envisaged by Section 12(3)(b) of the Rent Act, she failed to comply with the conditions mentioned in that section. She, thus, forfeited the said right to protection.

For the aforesaid reasons, the Revision Application is allowed. The judgment and order of the learned Joint District Judge, Surat in Regular Civil Appeal No.80/1982 is quashed and set-aside. The judgment and decree passed by the Small Causes Court, Surat in Small Rent Suit No.1364/1977 is set-aside in so far as the decree for possession is refused. The Small Rent Suit No.1364/1977 is allowed. The plaintiff do recover vacant possession of the suit premises from the defendant. The defendant do handover the vacant and peaceful possession of the suit premises to the plaintiff. The decree be drawn accordingly. Rule is made absolute. The defendant shall bear the cost throughout.

Learned advocate Mr.Almaula requests that the respondents be given time to vacate and handover the possession of the suit premises to the plaintiff. The

request is granted. The decree for eviction passed against the defendant shall not be executed till 3rd October, 2005, on condition that each respondent shall, within fifteen days from today, give undertaking to this Court in usual terms. Copy of each undertaking shall be given to the learned advocate Mr.Pandya. It is further directed that in the event the respondents fail to handover the vacant and peaceful possession of the suit premises to the plaintiff on or before 3rd October, 2005 as agreed, commencing from 1st October, 2005 they shall pay occupancy fee of Rs.500=00 per month to the plaintiff. Such occupancy fee shall be paid by the tenth day of the next succeeding month till the date the plaintiff recovers the vacant possession of the suit premises.

(Ms. R.M.Doshit, J.)

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